



NBN Co 2012 Special Access Undertaking (SAU) Consultation Paper

Submission to the Australian Competition and Consumer Commission
(ACCC)



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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government, working towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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ACCAN thanks the ACCC for the opportunity to comment on the NBN Co Special Access Undertaking (SAU) Consultation Paper. This submission offers general remarks in relation to consumer expectations relevant to the SAU, followed by comments on specific SAU provisions.

General remarks on consumer expectations

The consumer interest is vital in the ACCC's consideration of the SAU as the document establishes the boundaries within which the Australian fixed-line phone and broadband retail market will operate for decades. The price and quality factors which are determined by the SAU are likely to affect price and quality downstream in the retail market and it is these price and quality factors that are often at the forefront of consumers' minds when choosing fixed-line communications services.

At minimum, ACCAN supports the ACCC's view that it is important for NBN Co's core set of wholesale services – 'reference offers' – to enable retail services comparable to those that can currently be supplied over the existing network.¹

The public has experienced a marked decrease in ADSL prices over the last decade, and it would be reasonable to assume there is an expectation of a similar decrease over time with high-speed broadband. Anecdotally, indications are that the public associates broadband services with other high technology products. There is a strong expectation around these types of products that prices will come down over time.²

In its evaluation of the SAU, it is important for the ACCC to recognise that consumers have a wide variety of needs, interests and financial priorities. Not all consumers will want to spend a higher proportion of their income on fixed-line internet, telephony and other broadband services – even in a future where the range of services delivered over broadband will be greater.

It is noteworthy that an increase in the number of broadband-connected devices in households that have connected to the NBN in early release sites has been observed in recent research.³ This may be an indicator of high-speed broadband increasingly acquiring the characteristics of a 'traditional' essential service such as electricity, as it becomes more integrated into people's lives. This has the consequence that consumers will be more vulnerable to pricing increases as service demand becomes more inelastic.

ACCAN would accordingly urge the ACCC to be vigilant in relation to NBN Co wholesale pricing and product structures which may have the result of curtailing consumer choice over the coming years by in any way reducing the opportunity for consumers to pay less, or by creating pressure on consumers to select for more expensive higher usage plans that they may not want.

¹ Consultation Paper, p. 54

² For example, Eileen Bridges et. al., "A High-Tech Product Market Share Model with Customer Expectations" *Marketing Science*, vol. 14, no.1, Winter 1995.

³ Broadbanding Brunswick: High-speed Broadband and Household Media Ecologies: A Report on Household Take-up and Adoption of the National Broadband Network in the First Release Site of Brunswick, Victoria. (2013), ACCAN forthcoming.

Product development and withdrawal

ACCAN supports commitments in the SAU which will encourage NBN Co to develop wholesale products over time that will align with consumer demand.

We also support the Product Development Forum (PDF) through which NBN Co can receive feedback from its retail service provider (RSP) customers. However we would strongly urge that the Forums be open to end-users and consumer groups to participate in some manner. It is also important that there be an opportunity for end-users and consumer groups to participate in consultations on non-reference offer product withdrawals and that NBN Co not be given power to unilaterally withdraw such products.

We would be concerned if broadband and telephony products which were part of NBN Co's 'Initial Product Roadmap' were not covered by the PDF processes. In ACCAN's view, these essential products should not be excluded from such commitments which are designed to provide certainty and allow for feedback.

Prices

Role for ACCC: Given the complexity of the SAU and the long time period over which it is to apply, it is important that flexibility be maintained in the event that circumstances develop where the interplay between AVC and CVC pricing formulas does not work in the interest of consumers and in the interest of a competitive retail market.

It is impossible to rule out the potential for these formulas, together with NBN Co's cost recovery requirements, resulting in a less than optimal variety of services being available at an affordable price – particularly for new services.⁴

We would therefore support the SAU providing a wider role for the ACCC in adjusting prices. At minimum, it is important that the SAU ensures the cost of a basic voice-only service does not increase.

Initial prices for new products: ACCAN notes that NBN Co itself will make the final decision about prices for new products with regard to a range of principles including the nature and extent of market demand, the importance of affordability to drive take-up, and uniform national wholesale pricing.

ACCAN wishes to ensure that the SAU will contain fair mechanisms for a situation that may arise whereby essential services such as e-health may be introduced and delivered over broadband (separate from the internet). In these circumstances the public will require access to the service either free or at low prices. Accordingly the price for a new wholesale product from NBN Co designed to enable the supply of such an essential service becomes a matter of high-stakes public interest.

ACCAN would therefore urge that the SAU allow the ACCC to set initial prices for new products if it deems it necessary in the interests of end-users. It is inappropriate for NBN Co to retain such wide discretion free from regulatory restraint for price-setting in this regard.

⁴ Acknowledging the different circumstances of a vertically integrated incumbent, we should nevertheless learn from the experience of Telstra's over-priced ADSL services stifling ADSL take-up in the early 2000s – see Paul Fletcher, *Wired Brown Land?* UNSW Press, 2009, pp.71-74.

End user connection service levels

ACCAN has consulted RSPs and has several concerns with the SAU terms in relation to end user connection service levels.

Connection timeframes during migration: Currently the Customer Service Guarantee (CSG) means that consumers are entitled to have new connections delivered and faults repaired within particular timeframes and receive financial compensation if these timeframes are not met. Under the SAU however, consumers will apparently not benefit from the guaranteed connection timeframes promised by the CSG. For urban areas, instead of 5 working days for a new connection, consumers could be waiting 14 working days (around 3 weeks). We would request this timeframe be reduced as far as practicable.

New connection timeframes: NBN Co has introduced the concept of 'accelerated connections' where CSG connection timeframes do apply. This is likely to apply for example in circumstances where a person has moved house and there is no working copper service. NBN Co has applied a cap of 10% on these connections for each connectivity serving area. ACCAN is concerned that this is an arbitrary and low cap and we would urge that the cap be removed.

Priority Assistance: No allowance has been made for RSP timeframes for priority assistance (PA) connections and fault repairs. Where NBN Co is unable to complete a priority assistance connection within 24-48 hours, it commits to advise retail providers as soon as practicable. We would ask that the ACCC gives significant weight to the views of Telstra in relation to the time that Telstra requires to activate and repair PA services as well as the need for stronger obligations on NBN Co to advise when they are unable to complete a PA connection. This is important to consumers because Telstra would be obliged to offer an interim service in such circumstances.

We would also support a requirement in the SAU that replicates the requirement now on Telstra to identify and rectify those priority services that experience two or more faults in a quarter.⁵

End-to-end performance standards

Currently voice quality on the standard telephone service is covered by an Industry Code: "End-To-End Network Performance for the Standard Telephone Service".⁶ This Code sets certain standards for parameters such as overall loudness, transmission delay, echo control, circuit noise and post-dialling delay.

All these variables contribute to the quality of phone calls on the existing copper network. One illustrative observation about the end-user experience is that excessive delay by a matter of mere milliseconds in the transmission of voice can cause a conversation to

⁵ *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 cl. 19(10)(j); and section 4.7, ACIF Code C609:2007*

⁶ http://www.acma.gov.au/WEB/STANDARD/pc=PC_2082

become psychologically uncomfortable and undermine natural communication between callers.⁷

Currently there is no end-to-end performance standard in existence for services – either voice or data – over the NBN.

The public needs to have the assurance that service quality, including voice quality on NBN-based services, will not be worse than what we have come to expect from our existing network – including for entry-level, lower priced services. It may be that the SAU is an appropriate place for such guarantees of voice quality and data speeds to be delivered to end-users.

Privacy

While we recognise the need for RSPs to make available downstream customer information to NBN Co so that it can perform its functions, we would ask that the ACCC satisfy itself that the SAU provides that this information only be used in the performance of necessary functions for the supply of services and not for any other purpose, so as to reflect the Australian Privacy Principles (APPs).⁸

Variation of SAU

There should be opportunity for end-users and consumer groups to provide input into reviews of the SAU. Currently NBN Co has sole discretion to take a change of the SAU to the ACCC for approval. In order to create maximum flexibility, RSPs should also be able to propose changes.

⁷ See 'Telephony and the NBN' *Telecommunications Journal of Australia*, Volume 61, No. 2, 2011 and Outcomes from the ACS-TSA NBN Policy Forums, June 2011

⁸ <http://www.comlaw.gov.au/Details/C2012B00077>